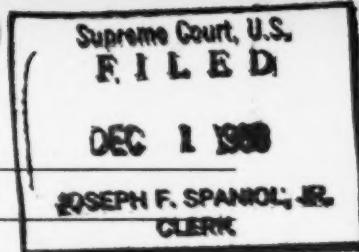


86 - 1909



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

No. _____

BESSIE W. COFFELT AND
KENNETH C. COFFELT *Petitioners*

VS.

ARKANSAS STATE
HIGHWAY COMMISSION *Respondents*

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ARKANSAS

PETITION FOR
WRIT OF CERTIORARI

KENNETH C. COFFELT
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QUESTIONS PRESENTED

IS A CITIZEN OF THE STATE OF ARKANSAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS GUARANTEED BY THE 5TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION WHEN:

I

THE COURTS OF ARKANSAS, BOTH TRIAL AND APPELLATE, BY THEIR FINAL JUDGMENTS AND OPINION RENDERED, PERMIT THE STATE OF ARKANSAS TO CONDEMN AND TAKE PRIVATE PROPERTY OF THE CITIZEN FOR PUBLIC USE WITHOUT COMPENSATION?

II

WHEN THE JUDGMENTS AND OPINION OF SAID ARKANSAS COURTS UPHOLD AN ILLEGAL JURY VERDICT?

III

WHEN THE SUPREME COURT OF ARKANSAS REFUSES TO PROVIDE A FULL SUPREME COURT MEMBERSHIP TO PASS UPON THE APPEAL BEFORE IT?

IV

WHEN THE ARKANSAS SUPREME COURT REFUSED TO DECIDE THE APPEAL BEFORE IT ON THE MERITS, AND COMPLETELY IGNORED AND REFUSED TO PASS UPON THE PLEA OF PETITIONERS BEFORE THAT COURT THAT THEIR CONSTITUTIONAL RIGHTS WERE BEING VIOLATED UNDER PROVISIONS OF BOTH THE U.S. AND ARKANSAS CONSTITUTIONS, WHICH PROVISIONS ARE FULLY SET FORTH IN THIS PETITION?

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**PETITION FOR
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PARTIES

The caption of the case in this Court contains the names of all parties.

DECISIONS BELOW

The judgment of the Circuit Court of Pulaski County, Arkansas, based on the jury verdict, with the jury verdict incorporated therein, and the Motion for New Trial filed in that court, and the Order of that court denying Motion for New Trial and the three separate opinions of the Justices of the Supreme Court of Arkansas rendered June 30, 1986, in *Bessie W. Coffelt and Kenneth C. Coffelt*, Appellants vs. *Arkansas*

State Highway Commission, Appellee, Case No. 86-34, and Petition for Rehearing, and Request for Rehearing en banc, filed in that court, and that court's final Order denying Rehearing, September 15, 1986, and denying Request for Rehearing en banc, are printed in the Appendix at A1 through A20.

BASIS FOR INVOKING JURISDICTION

The opinions of the Justices of the Supreme Court of Arkansas were rendered June 30, 1986. Petitioners herein duly filed their Petition for Rehearing in that court alleging the violation of their constitutional rights, as herein claimed by them, and they also requested of that court rehearing en banc, and their said Petition for Rehearing and Request for Rehearing En Banc were denied by the Supreme Court of Arkansas, September 15, 1986, (A-7 through A-10).

This Petition for Certiorari is timely, because it is filed within 90 days of that decision. 28 USC §1201(c); Rule 20 U.S. Supreme Court Rules.

This Court has jurisdiction to review the opinion of the Supreme Court of Arkansas (A-2 and A-3) on Writ of Certiorari, for the violation of the constitutional rights guaranteed to these petitioners under the 5th and 14th Amendments to the U.S. Constitution, pursuant to 28 USC §1257(3), and U.S. Supreme Court Rule 17, 1(B), (C), and pursuant to the said U.S. Constitutional Amendments themselves.

CONSTITUTIONAL PROVISIONS INVOLVED

The case involves the taking of private property for public use without compensation, in violation of the following constitutional provisions:

No person shall be deprived of life, liberty, or property, without due process of law. — Amendment 5 U.S. Constitution

Nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. — Amendment 14 U.S. Constitution

The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor. — Article 2, Sec. 22, Arkansas Constitution

In case all or any of the Judges of the Supreme Court shall be disqualified from presiding in any cause or causes, the court or the disqualified Judge *shall* notify the same to the Governor, who *shall* immediately commission the requisite number of men learned in the law to sit in the trial and determination of such causes. — Article 7, Sec. 9, Arkansas Constitution (emphasis added)

Every person is entitled to a certain remedy in the laws for all injuries or wrongs as he may receive in his person, property or character; he ought to obtain justice freely, and without purchase, completely, and without denial, promptly and without delay, *conformably to the laws.*" — Article 2, Sec. 13, Arkansas Constitution (emphasis added)

STATEMENT OF THE CASE

I. Basis for Federal Jurisdiction.

This action was originally brought and successfully prosecuted in the Circuit Court of Pulaski County, Arkansas, by the Arkansas State Highway Commission against Bessie W. Coffelt and Kenneth C. Coffelt to condemn and take certain of their lands which they owned in fee. The jurisdiction of this Court is invoked because of the violation of petitioners' constitutional property rights by Respondent, and by the said Circuit Court and Supreme Court of Arkansas, as guaranteed to petitioners by the due process and equal protection of the laws clause in the 5th and 14th Amendments to the Constitution of the United States, because petitioners have been denied compensation for their property taken from them and for their additional damage for their admitted loss of ingress and egress to their remaining abutting lands, in violation of Article 2, Sec. 22, Arkansas Constitution, which provides:

The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.

and further, because the Supreme Court of Arkansas denied to Petitioners their constitutional right to have a full membership of that court pass upon the issues raised before it, as required by Article 7, Sec. 9 of the Arkansas Constitution, which provides:

In case all or any of the Judges of the Supreme Court shall be disqualified from presiding in any cause or causes, the Court or the disqualified Judge *shall* notify the same to the Governor, who *shall* immediately commission the requisite number of men learned in the law to sit in the

trial and determination of such causes.
(emphasis added)

Petitioners also contend that their constitutional rights to due process and equal protection of the laws were clearly denied to them by the said Arkansas courts when said courts refused to follow the plain language of Art. 2, Sec. 13, Arkansas Constitution, which provides,

Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase, completely, and without denial, promptly and without delay, conformably to the laws.

The alleged violation of petitioners' constitutional rights under both the U.S. and Ark. Constitutions, as set forth in this Petition in this Court, were raised and argued by Petitioners in both the Circuit Court and Supreme Court of Arkansas in the Motion for New Trial in the said Circuit Court, and in Petitioners' Brief and Argument, and Petition for Rehearing, in the Arkansas Supreme Court, all to no avail.

2. Facts and procedural history

Petitioners owned the fee title to the south 20 feet of the land within the right-of-way of what is known as Coffelt Road in Pulaski County, Arkansas, where the road was crossed by Arkansas State Highway 67 when the construction of the highway was completed about 1960. The road is a County Road and has been traveled for over a half-century. The road right-of-way is 40 feet wide. The right-of-way of the highway is 300 feet wide. The road runs east and west. The highway runs north and south.

Petitioners own two tracts of land abutting both the road

and the highway; a tract on each side of the highway, and south of the road. The road where it was crossed by the highway was the direct route of ingress and egress to and from the said two tracts of land owned by petitioners. Before the highway was constructed and crossed the road, all of said lands lay together.

In this litigation, Respondent condemned and took fee simple title to the said 20-foot strip of petitioners' land within the said road/highway crossing, and immediately closed the crossing, which resulted in destroying the direct ingress and egress to the said two tracts of petitioners' remaining lands abutting the highway and Coffelt Road on each side of the highway, and likewise closed that route for all traffic to the general public.

Petitioners' lands are commercial properties located within a heavily populated and traveled, and trade territory.

The trial jury and trial Circuit Court, and the Supreme Court of Arkansas, refused to compensate Petitioners for their land taken from them, and for the destruction of the said ingress and egress to their said remaining abutting property.

The trial jury in the Pulaski County Circuit Court returned the following verdict:

We, the jury, find for the defendant, Bessie W. Coffelt, and we fix her compensation at nothing.

The jury had been instructed by that Court as follows:

. . . You have but a single duty, and that is to determine . . . the amount of just compensation to be awarded to the defendant.

That Court entered its judgment on the said verdict and

incorporated it therein. Motion to set aside that verdict and judgment, and to Grant New Trial was duly filed in that Court by Petitioners, and the Motion was overruled and denied by that Court, and appeal therefrom to the Supreme Court of Arkansas was duly perfected. In disposing of the case on appeal, the Supreme Court of Arkansas rendered three separate and different opinions, having the effect of affirming the said Circuit Court judgment appealed from. One such opinion of the Arkansas Supreme Court was joined in by only three Justices. That opinion affirmed the lower court on the claim that counsel for the Appellants, Petitioners here, failed to abstract some of the testimony set out in the brief in the first person, thereby claiming violation of a rule of that Court, and that opinion completely ignored the U.S. and Arkansas Constitutional provisions, and the fixed and undisputed case law, upon which the Appellants, Petitioners here, had relied and argued in that Court and now argue here. Another Justice of that Court rendered what was styled a concurring opinion, but which was in fact a dissenting opinion to the opinion of the three Justices claiming the Court Rule infraction. The other participating Justice wrote a dissenting opinion upholding the constitutional rights of Petitioners to be compensated for their property taken, and for their damages, as guaranteed to them under the said Article 2, Sec. 22 of the Arkansas Constitution. The other two Justices of the Arkansas Supreme Court disqualified and did not participate. That court is composed of a Chief Justice and six Associate Justices. None of the Justices of the Arkansas Supreme Court took any action to have a full membership of the Court to decide the case, and all refused Petitioners' request for a full membership of the Court to decide the Petition for Rehearing, as required by the said Article 7, Sec. 9, of the Arkansas Constitution. Also, the Supreme Court of Arkansas refused to consider and to take cognizance of the provisions of Art. 2, Sec. 13, of the Arkansas Constitution.

This controversy between the parties has been active in various forms of litigation in the Arkansas courts since 1972. April 17, 1974, the Chancery Court of Pulaski County, Arkansas, in Case No. 158375, on complaint of Petitioners against Respondent, handed down a decree permanently restraining the Arkansas State Highway Commission, "from closing or interfering in any manner with the free use of Coffelt Road Crossing, or interfering with the flow of traffic on said Crossing." The Arkansas State Highway Commission appealed that permanent restraining order judgment to the Supreme Court of Arkansas, and that court affirmed the said Chancery Court Restraining Order judgment on March 10, 1975, in Case No. 74-218. See, *Arkansas State Highway Commission vs. Bessie W. Coffelt*, 257 Ark. 770. The said injunction upheld by the Supreme Court of Arkansas, in that decision, remained in effect until Respondent, on June 14, 1984, instituted in the Pulaski County, Arkansas Circuit Court this condemnation litigation which has now reached this Court.

ARGUMENT

1. Introduction

"Equal Justice under the Law." It is hard to believe what has happened in this case. These Petitioners, property owners, have no place now to turn but to this Court. There is not a single decision of any Court in any jurisdiction in this country that has ever permitted, directly or indirectly, or for any reason whatsoever, the taking of private property for public use without compensation; that is until now in this proceeding. It seems to counsel an uncalled for thing to have to argue to this Court the elementary and undisputed principles of law that govern and control this litigation, and upholds the contentions of these Petitioners now presented to this Court.

2. Reasons for granting certiorari

The jury verdict was an illegal verdict and contrary to law in all respects. It found for the defendant, but did not find for her. It failed to comply with the instruction of the court, "to fix the *amount* of just compensation," for Petitioners' land taken, and for the damages Petitioners had sustained. Hence, the judgment on that verdict is also an illegal judgment. Due process of law and Equal Protection of the laws do not support that type of legal procedure, and when the Supreme Court of Arkansas refused to even consider the constitutional plea of Petitioners, that is a denial of due process and equal protection of the laws per se. The Constitution is above any act of any legislative body or jury verdict, or court judgment or court rule, when they conflict with or destroy or deny the protection which that Constitution affords to a citizen.

A verdict in disobedience to the instructions of the Court upon a point of law is a verdict against law. *Declez v. Save*, 12 P. 722, 723, 71 Cal. 552, 553 (1887); *Emerson v. Santa Clara*

County, 40 Cal. 543, 545 (1871). A verdict is contrary to law, when it is contrary to the instructions, whether they are right or wrong. *Lynch v. Snead Architectural Iron Works*, 116 S.W.693, 695; 132 Ky. 241; 21 L.R. A., N.S., 852 (1909).

In *Gordon v. Camden Curb and Gutter District No. 1*, 172 Ark. 97 (1926), the Supreme Court of Arkansas said,

. . . [W]here property is taken or damaged for public use, compensation from the public *must* be awarded . . .
(emphasis added)

and in an early case appealed from the Supreme Court of Arkansas, the United States Supreme Court upheld this definite and unrestricted announced legal and constitutional right in *Hot Springs Railroad Company v. Williamson*, 136 U.S. 121 (1890). In that case, this Court said on page 138:

. . . [T]he use of a street by a railroad company as the site for its track — when it interferes with the rights of adjoining lot owners to the use of the street, as a means of ingress and egress, subjects the railroad company to an action for damages on account of the diminution of the value of the property caused by such use. . . .

So the U.S. Supreme Court held in that case that the Railroad Company could not impair the right to use the street without paying the owners, including compensation for damages for their loss of ingress and egress by way of the street. That is exactly what we have in the case at bar. In *Hot Springs, supra*, this Court referred to the fact that the Arkansas Constitution required that full compensation be paid for privately owned property taken for public use, ifs, ands, or buts and court rules to the contrary notwithstanding, and that requirement in the Arkansas Constitution at that time is still there today.

In *Watson v. Harris*, 214 Ark. page 353 (1949), the Court

used the word "must" again, and said, "It is the actual taking, or damage, of lands for public use — that under the State and Federal Constitutions *must* be compensated."

In *Mo-Pac Railroad Co. v. Juneau*, 178 Ark. 425 (1928), the Supreme Court of Arkansas again said, ". . . our Constitution provides: 'private property shall not be *taken*, appropriated, or damaged for public use without *full* compensation therefor.' (emphasis added)

In *Riggs, Peabody & Co. v. Martin*, 5 Ark. 506 (1844), the Court said, "When a party has a legal right he is entitled to a legal remedy to enforce it. It is the obligation of the law, compelling men to perform their duties or punishing them for their violation which secures protection to life, liberty, and property." That early decision has never been overturned.

Arkansas State Highway Commission v. Union Planters National Bank, 231 Ark. 907 (1960), is a leading and controlling case on the question now before this court, and in many respects is similar to our case at bar. In *Planters*, the Highway Commission was seeking to acquire fee simple title to land that "underlies its existing easement," and they were taking title in fee, "for the acquisition and control of access rights of land adjacent and contiguous to the highway right-of-way," and, "indeed, we emphasize the fact that nowhere in the Highway Commission's brief does it question the amount of the award if the landowners' inability to cross the levee is a compensable element of damage," and, the Court went on to hold that it was, and that the right to cross the road was not within the original easement. Of course, the right to cross Coffelt Road was never denied in our case. In *Union Planters, supra*, the Court specifically said, "It cannot be doubted that the landowner would have been entitled to commensurate severance damages." Cases there cited. Further quoting from *Planters*, "The Highway Commission, itself, has often

recognized that after a condemnation, an abutting owner whose land has been cut in two still has a right to cross the road." Also quoting from *Planters, supra*, "In the usual case, the Highway Commission will be compelled to condemn a new right-of-way for this type of highway (controlled access), and in such an original proceeding it goes without saying that a landowner whose land is cut in two will be entitled to compensation for his loss. The fact that the legislature did not authorize the Highway Commission to convert an existing easement into a controlled access facility, even when that could be accomplished, demonstrates that some importance was attached to the acquisition of the fee simple," and, "in the second place, when the arguments on both sides are fairly well balanced, consideration of equity and justice are entitled to great weight. Here the equities undeniably lie with the landowners."

In *Arkansas State Highway Commission v. Wallace*, 247 Ark. 163 (1969), the Court said, "We hold that a fee simple taking — for highway purposes — *will as a matter of law* take precedence over all other uses, and that Mrs. Wallace's use of the highway for going in and out of her property can reasonably be expected to be affected." So, in the instant case, the taking of petitioners' use of their road for going to and from their properties can reasonably be expected to affect their use of their remaining abutting lands as a matter of law.

In *The Federal Land Bank of St. Louis vs. Arkansas State Highway Commission*, 194 Ark. at page 619 (1937), the Supreme Court of Arkansas said

Appellant had, therefore, the right to prohibit the Highway Commission, or any other agency of government from taking its property until compensation had been paid. It was so expressly held in the case of *Arkansas State Highway Commission vs. Partain*, 192 Ark. 127 (1936).

That is exactly what these Petitioners did. They obtained a permanent restraining order, upheld by the Arkansas Supreme Court, that prohibited the Respondent from taking or damaging their property, involved in this litigation until they were paid in full for same. See *Arkansas State Highway Commission vs. Bessie W. Coffelt*, 257 Ark. 770 (1975). In that case Justice Fogleman, later Chief Justice, writing for the Court in a supplemental opinion rendered June 2, 1975, proclaimed, ". . . Appellant cannot proceed to use the area until just compensation has been paid or secured to Appellee." (p. 780). That decision established and fixed the law of this case, and for the same Court to now brush it aside, and completely ignore it, because of an alleged infraction of an unrelated procedural court rule, which is not above the Constitution, and to completely refuse to uphold the admitted constitutional rights of these Petitioners, is a denial to them of due process and equal protection of the laws to which they are entitled, as have heretofore been universally afforded to every citizen in this country in like circumstances.

It seems elementary, and nonsense, to have to argue to this Court that every person in this land is entitled to the protection their Constitution gives them. If a State denies that protection to one of its citizens, the strong arm of our National Government stands ready to correct the wrong done. It is its constitutional duty to do so, and it does not shrink.

"Due Process of Law" is now interpreted to mean that the Government is without right to deprive a person of life, liberty, or property by any act that has no reasonable relation to any proper governmental purpose, or which is so far beyond the necessity of the case as to be an arbitrary exercise of governmental power. *Albritton vs. City of Wynona, Miss.*, 178 So. 799, 803; 115 A.L.R. 1436 (1938). See also, *Leigh vs. Green*, 193 U.S. 79, 48 L. Ed. 623 (1904).

"Equal protection of the laws," means equal security under them to everyone under similar terms in his life, his liberty, his property, and in the pursuit of happiness. It not only implies the right of each to resort to the courts on the same terms with others for the security of his person and property, the prevention and redress of wrong, and the enforcement of contracts, but also his exemption from any greater burdens as are usually imposed upon all others under like circumstances. *Templar vs. Michigan State Board of Examiners of Barbers*, 90 N.W. 1058, 1059, 131 Mich. 254 (1902). See also, *Connolly vs. Union Sewer Pipe Co.*, 184 U.S. 540, 46 L.Ed. 679 (1902).

CONCLUSION

Petitioners maintain that there can be no due process or equal protection of the laws in any given case, unless and until the constitutional rights of the litigant are upheld, and that the Constitution itself vests the jurisdiction in all courts to uphold its provisions. Every judge of every court takes an oath to uphold the Constitution without any restrictions or reservations. That has not been done in the case at bar.

This Court should issue its Writ of Certiorari to the Supreme Court of Arkansas, and should reverse that Court's decision.

Respectfully submitted,

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November, 1986

Counsel of Record



A-1

APPENDIX

SUPREME COURT OF ARKANSAS

No. 86-34

Opinion delivered June 30, 1986

Bessie W. Coffelt *Appellant*

v.

Arkansas State Highway Commission *Appellee*

Appeal from Pulaski Circuit Court; Civ. #84-4336

The Honorable David Bogard, Judge. Affirmed.

Robert H. Dudley, Justice.

This is the second appeal of this condemnation case. See, *Coffelt v. Arkansas State Highway Commission*, 285 Ark. 314, 686 S.W.2d 786 (1985). We affirm the trial court because the appellant has flagrantly violated Rules 9(c) and (d) of the Rules of the Supreme Court and the Court of Appeals.

In the section of her brief entitled "Abstract of Record" the appellant has not used the first person and has reprinted a major part of the trial transcript. A reprint of a major part of the transcript is not an abstract. We have consistently held that this type of flagrant violation of Rule 9(d) calls for summary affirmation. *Gray v. Ouachita Creek Watershed District*, 239 Ark. 141, 387 S.W.2d 605 (1965); *Smith v. Pond*, 259 Ark. 564, 534 S.W.2d 769 (1976); *Harris v. Arkansas Real Estate Commission*, 274 Ark. 537, 627 S.W.2d 1 (1982); *Board of Education of Franklin County v. Ozark School District No. 14*, 280 Ark. 15, 655 S.W.2d 368 (1983).

In addition, appellant sets out only one point of appeal which is as follows:

The trial court erred in denying appellant's motion to set

aside the verdict and judgment and to grant new trial and in rejecting each of her reasons and allegations set forth therein.

Then, in the argument section of her brief, appellant addresses thirty-one points of alleged error by the trial court. This is a clear violation of Rule 9(c) which requires an appellant to concisely list and separately number the points relied on for reversal.

We affirm the trial court pursuant to Rule 9(e)(2).

George Rose Smith and Hickman, JJ., not participating.

Purtle, J., dissents.

Hays, J., concurs.

SUPREME COURT OF ARKANSAS

No. 86-34

Opinion delivered June 30, 1986

Bessie W. Coffelt *Appellant*

V.

Arkansas State Highway Commission *Appellee*

Appeal from Pulaski Circuit Court; [84-4336]

Honorable David Bogard, Judge.

Steele Hays, Justice, concurring.

I agree with the majority that the testimony has been abstracted in question and answer form and in that respect it violates Rule 9 of our rules. *Harris v. Arkansas Real Estate*

Commission, 274 Ark. 537, 627 S.W.2d 1 (1982). Admittedly, we have affirmed other cases on the basis of Rule 9 where the appellant failed to provide an abridgement and simply reproduced the record in near verbatim form. *Oaklawn Jockey Club v. Jameson*, 280 Ark. 150, 655 S.W.2d 417 (1983); *Gray v. Ouachita Creek Watershed District*, 239 Ark. 142, 387 S.W.2d 605 (1965). But in those cases the breach was far greater. In the *Harris* case the abstract covers two volumes, with 154 pages devoted to testimony which obviously is reproduced word for word in question and answer form. In *Oaklawn v. Jameson*, the abstract was 261 pages, 80% of which was not relevant to the two questions presented by the appeal. In *Board of Education of Franklin Co. v. Ozark School District*, 280 Ark. 15, 655 S.W.2d 368 (1983), the appellants reproduced virtually the entire records of two appeals. The abstract contained "verbatim reprints of almost every document in both records, including summonses, statutes, pleadings, tax records and minutes from school board meetings."

On the other hand, we have often looked beyond technical violations of Rule 9 and decided the issues on their merit. See *Myers v. Muuss*, 281 Ark. 188 (p. 190), 622 S.W.2d 805 (1984); *Ford v. State*, 276 Ark. 98 (p. 112), 633 S.W.2d 3 (1982); *Lincoln v. State*, 262 Ark. 511, 558 S.W.2d 146 (1977), and *Randle v. State*, 257 Ark. 232, 516 S.W.2d 6 (1974).

Abstracting under Rule 9 is not black and white. There is a sizeable area of subjective judgment involved in deciding on just the right amount. And there are, I submit, no clear boundaries between violations that are flagrant and those that are marginal. For that reason alone when the issue is one of too much rather than too little we should, I believe, err on the side of tolerance rather than intolerance. It is one thing for the abstract to omit crucial segments of the record so that an understanding of the points argued on appeal is impossible. [For example, see *Lawson v. Lewis*, 276 Ark. 7, 631 S.W.2d 611

(1982); *Wade v. Franklin-Stricklin Land Surveyors, Inc.*, 264 Ark. 841, 575 S.W.2d 672 (1979); *Bank of Ozark v. Isaacs*, 263 Ark. 113, 563 S.W.2d 707 (1978); *Merritt v. Merritt*, 263 Ark. 432, 565 S.W.2d 603 (1978).] But it is a different matter when the abstract contains more than is necessary (though not so much as to be wholly unmanageable) because the simple expediency of skipping over non-essential portions is available to the reader.

Here, the only infraction I can detect in the abstracting (I disagree the abstract is in the third person) is that the testimony is produced in question and answer form. But there is relatively little of it. There were only two witnesses — one to a side — and the entire abstract of the testimony covers only 45 pages, about ten of which are attributable to objections and dialogue between the trial judge and the lawyers. That does not strike me as being so *flagrant* as to require affirmance under Rule 9.

I would consider the appeal on the merits and on that basis I would affirm the judgment.

SUPREME COURT OF ARKANSAS

No. 86-34

Opinion delivered June 30, 1986

Bessie W. Coffelt *Appellant*

V.

Arkansas State Highway Commission *Appellee*

Appeal from Pulaski Circuit Court; Civ. #84-4336

The Honorable David Bogard, Judge,

John I. Purtle, Justice, dissenting.

Article 2, Section 22 of the Constitution states:

The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.

Therefore, neither Rule 9(d) nor the Highway Department are before and higher than our Constitution.

I would reverse and remand.

SUPREME COURT OF ARKANSAS

Bessie W. Coffelt *Appellant*

V. No. 86-34

Arkansas State Highway Commission *Appellee*

MOTION (Filed June 30, 1986)

Comes the Appellant and moves the court to request the Governor to appoint two Judges to serve in this cause to replace Judges Smith and Hickman, who disqualified, to hear and to pass upon Appellant's Petition for Rehearing which she will file in due course in this case.

In support of this Motion, Appellant states that she believes that under the circumstances now existing in this litigation that she is entitled to have a full court to decide any future questions herein.

Respectfully submitted,

Kenneth C. Coffelt
218 Pyramid Place
Little Rock, AR 72201
Attorney for Appellant

SUPREME COURT OF ARKANSAS

Bessie W. Coffelt *Appellant*

V. No. 86-34

Arkansas State Highway Commission *Appellee*

PETITION FOR REHEARING

(Filed July 16, 1986)

The Appellant petitions this court to rehear this cause, and upon rehearing to reverse itself, and reverse the lower court and order new trial, and specifically direct that Appellant must be compensated for the land which was actually taken from her by the Appellee, and in support of this Petition, she states:

She renews each and every claim and argument she made in her brief filed herein.

The decision of this court violates the constitutional rights of the Appellant under both the State and the U.S. Constitutions and the fixed rules of the law of the land. She has been denied due process of law and the equal protection of the laws under both. The court has permitted her land to be taken without compensation and in this regard she has been discriminated against in that all other litigants in similar cases have always been paid for their property taken.

There is not a single decision of this court on record that has ever held that the State can, until now, take private property without paying for it.

Casey v. Douglas, 173 Ark. 641, held that "the county court cannot make a valid order which would authorize the taking of land without just compensation first being paid." p. 75 *Arkansas Eminent Domain Digest*. If the county court cannot make such an order, neither can any other court. See, cases cited in *Eminent Domain Digest*, pp 73-76.

This Court is one of appellate jurisdiction by constitutional mandate, which means it is the duty of the court to review the final decisions of an inferior court. *Ex Parte, Batesville*, 29 Ark. 82; *Mallett v. Thompson*, 94 Ark. 119. The Court has refused to review and decide the merits of the lower court verdict and judgment.

There is no discretion in any court or jury to violate, or refuse to sustain, or uphold all the provisions of the Constitutions and State and Federal fixed rules of law. See, the extracts from the cases cited under the heading, "Discretion," Vol. 12, p. 587-90, *Words & Phrases*. There, it is repeatedly stated that "Discretion is the power exercised by courts to determine questions under which no strict rule of law is applicable, and the term 'discretion' implies the absence of a hard and fast rule, and the establishment of a clearly defined rule would be the end of discretion." Numerous cases cited.

None of the decisions of this Court handed down in this proceeding states the facts now at issue for the Bench and Bar to read. The Court ought to tell the Bench and Bar that it is now holding that the State can take private property without paying for it.

This Court in this cause has also violated Sec. 9 of Art. 7, Ark. Const. I did not know that Justice Smith had disqualified until oral argument.

No rule of this Court is greater than the Constitution, but, on top of it all, your rule was also violated, if violated at all, by this Court in accepting the brief. The same rule 9d. Furthermore, a quorum of this Court has not agreed on, or passed on, any single issue.

Respectfully submitted,

Kenneth C. Coffelt
Attorney for Appellant

LAW OR CHANCERY MANDATE

STATE OF ARKANSAS.

SCT.

In the Supreme Court

BE IT REMEMBERED. That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock on the 1st day, being the first Monday of October, A.D. 1985, amongst others were the following proceedings, to-wit:

On the 21st day of July, A.D. 1986, a day of said term

Bessie W. CoffeltAppellant

No. 86-34 vs.

Arkansas State Highway CommissionAppellee

Appeal from Pulaski Circuit Court, Sixth Division,
(Circuit Court Case No. 84-4336)

Appellant's motion to appoint Special Justices for rehearing is denied. Holt, C.J., and George Rose Smith and Hickman, JJ., not participating.

LAW OR CHANCERY MANDATE

STATE OF ARKANSAS.

SCT.

In the Supreme Court

BE IT REMEMBERED. That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock on the 1st day, being the first Monday of October, A.D. 1985, amongst others were the following proceedings, to-wit:

On the 15th day of September, A.D. 1986, a day of said term

Bessie W. CoffeltAppellant

No. 86-34 vs.

Arkansas State Highway CommissionAppellee

Appeal from Pulaski Circuit Court, Sixth Division,
(Circuit Court Case No. 84-4336)

Petition for Rehearing is denied. George Rose Smith and
Hickman, JJ., not participating.

IN THE CIRCUIT COURT OF
PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

Arkansas State Highway Commission Plaintiff

Vs. No. CIV 84-4336

Bessie W. Coffelt and Kenneth
C. Coffelt Defendants

JUDGMENT
(Filed Nov. 12, 1985)

Now on this 7th day of November, 1985, this cause came
on for hearing on the amount of compensation to be awarded
Bessie W. Coffelt, defendant herein, for the taking of certain of
her lands, said lands being located in Pulaski County, Ar-
kansas, and described in the Complaint and Declaration of

Taking as follows:

TRACT NO. 1 — JOB NO. 6990

And all interests Bessie W. Coffelt and Kenneth C. Coffelt have in a 50 foot strip of land being 25 feet either side of the Centerline of Coffelt Road, Pulaski County, Arkansas, said Centerline being more particularly described as follows:

Beginning at a point on the existing Westerly right of way line of U.S. Highway 67, said point being 150 feet left of and perpendicular to Centerline Station 837+92.5 Jobs 6478 and 6990; thence North 89° 49' East along the Centerline of Coffelt Road to a point on the existing Easterly right of way line of U.S. Highway 67, said point being 150 feet right of and perpendicular to Centerline Station 838+12.5 of Jobs 6478 and 6990.

Plaintiff and defendants announced ready for trial, plaintiff being represented by Philip N. Gowen, its attorney, and defendants being represented by Kenneth C. Coffelt and Michael K. Wilson, their attorneys. Whereupon a jury composed of twelve lawful jurors was selected, sworn and impaneled to hear and try this cause. After hearing all of the testimony of the witnesses and considering the exhibits introduced, the stipulations of counsel, the instructions of the Court, and the arguments of counsel, said jury retired and after due deliberation returned the following verdict in open Court:

"We the jury, find for Bessie W. Coffelt and we fix compensation at \$ nothing.

/s/ Gayle Windsor, Jr.
Foreman

Greg Moore

Emmett Parker
Pam Massa
Linda Sadler
Gary Martin
Robert Evans
Adelaide Newton
Ann Suttor."

The Court further finds that the plaintiff did deposit in the Registry of the Court as estimated just compensation for the taking herein the sum of \$25,000.00, and that the defendants have withdrawn said deposit.

IT IS THEREFORE CONSIDERED ORDERED AND ADJUDGED that defendants recover no damages from plaintiff; that plaintiff has heretofore deposited the sum of \$25,000.00 in the registry of this Court as estimated compensation to defendants herein, and that plaintiff is entitled to recover of and from said defendants the sum of \$25,000.00, with interest at six per cent per annum from July 9, 1984, on \$17,000.00 thereof.

IT IS THEREFORE FURTHER CONSIDERED ORDERED AND ADJUDGED that plaintiff do have and recover of and from defendants judgment in the sum of \$25,000.00, together with interest at six per cent per annum from July 9, 1984, on \$17,000.00 thereof.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that the fee simple title to the lands described and designated as Tract 1 in the Complaint and Declaration of Taking, together with any and all existing, future, and potential common law or statutory rights or easements of access or ingress to, from and across the described property to and from adjoining and abutting property, except for existing access to frontage roads, be confirmed and vested in the plaintiff, Arkansas State Highway Commission. There is

reserved and excepted to defendants the right of direct access, as prescribed and limited by the regulations and policies of the Arkansas State Highway Commission, to the adjacent frontage roads from the defendants' remaining property; however, there shall be no right of direct access from such frontage roads to and from the lanes of the thruway or main lanes of Highway 67-167.

/s/ David Bogard
Circuit Judge
Dated 11/12/85

The said Circuit Court had instructed the trial jury as follows:

This is an action known as an imminent domain proceeding whereby the State of Arkansas through its Highway Commission by filing a declaration of taking on June 14, 1984, acquired fee simple title to the lands described in the complaint and declaration of taking. Therefore, you have but a single duty, and that is to determine from a preponderance of the evidence and from the rules set forth in these instructions the *amount* of just compensation to be awarded the defendant.

(Tr. 306 of official Circuit Court trial record on file in the Supreme Court of Arkansas.)

The jury verdict is included in the Circuit Court Judgment in this appendix (A-11).

IN THE CIRCUIT COURT OF
PUZ ASKI COUNTY, ARKANSAS

Arkansas State Highway Commission Plaintiff

Vs. No. 84-4336

Bessie W. Coffelt Defendant

DEFENDANT'S MOTION TO SET ASIDE VERDICT
AND JUDGMENT AND TO GRANT NEW TRIAL

(Filed Nov. 18, 1985)

Comes the defendant, Bessie W. Coffelt, and moves the court to set aside, vacate, and hold for naught the verdict of the jury and judgment of the court, and grant new trial herein, for the following reasons:

1. The verdict of the jury and judgment of the court is contrary to the law.
2. The verdict of the jury and judgment of the court is contrary to the evidence.
3. The verdict of the jury and judgment of the court is contrary to both the law and the evidence.
4. The verdict of the jury shocks the sense of justice.
 - 4A. The verdict of the jury is inherently wrong on its face, and is not responsive to the instructions of the court, and the pleadings, and is not susceptible for any valid judgment to be rendered thereon, and hence, the judgment thereon is a nullity.
5. The verdict of the jury and judgment of the court thereon is clearly against the admitted facts in the case, and is clearly against the legal pronouncements that have been handed down by the courts from the beginning in this litigation.

6. Under the law of the case, and the pleadings herein, the defendant property owner is entitled to recover some damages as a matter of law; hence, the invalidity of the verdict and judgment.

7. Under the admitted physical facts in the case, the defendant landowner is entitled to some monetary judgment to be fixed by a jury.

26. Further, this Motion should be granted because the court will take judicial notice of the fact that the plaintiff, when it filed this lawsuit, admitted that defendant's lands involved, because of the taking, was damaged in the sum of \$8,000 under their own theory of the applicable law pertaining to the measure of the damages done; the same theory which it had advanced from the beginning of this litigation, and further, because their testimony at the previous trial, that plaintiff had been damaged \$18,000; and further, after a hearing the trial court ordered plaintiff to deposit \$25,000 in the registry of the court to cover defendant's damages.

27. Further, this Motion should be granted because the undisputed and admitted evidence of plaintiff's own expert witness Putman, was that abutting property at every cross over intersection on Highway 67, if closed, would be damaged and reduced in value, which testimony contradicts and nullifies his statement that defendant's abutting lands were not damaged by closing the Coffelt Road Crossing.

28. The verdict of the jury and judgment of the court if allowed to stand, violates the constitutional rights of this defendant under both the State and Federal Constitutions; in that: her properties will have been taken and damaged without just compensation.

30. The Circuit Judge, law court, has no power to quiet title, or place any restrictions on the Frontage Roads, or Highway, in this case as provided for in the judgment.

31. The court erred in refusing defendant's request to let the trial jury go to the scene and view and observe the lands involved in this case, the defendant offering to pay the expense of the transportation. . . .

WHEREFORE, the defendant prays the court to sustain and grant this Motion, and for all proper relief.

Kenneth C. Coffelt
Attorney for Defendant,
Bessie W. Coffelt

IN THE CIRCUIT COURT OF
PULASKI COUNTY, ARKANSAS

Arkansas State Highway Commission Plaintiff

Vs. No. 84-4336

Bessie W. Coffelt Defendant

COURT ORDER
(Filed Nov. 25, 1985)

It is the order and judgment of the Court that the Motion of defendant to vacate and set aside jury verdict and judgment thereon and grant new trial be, and the same is hereby denied.

IT IS SO ORDERED.

This 25th day of November, 1985.

/s/ David Bogard
Circuit Judge

